IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21090 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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JITUBHAI HARJIBHAI RABARI - Petitioner(s)

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :
MR KIRAN R JANI for Petitioner(s) : 1,MR SATISH R PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/12/2005

ORAL JUDGMENT

1.Jitubhai Harjibhai Rabari, petitioner-detenu has filed this habeas corpus petition under Article 226 of the

Constitution of India for quashing and setting aside the order of detention dated 17/9/2005 passed by the Police Commissioner, Ahmedabad. Petition was filed on 10/10/2005. On 18/11/2005, this Court (Coram:A.S.Dave,J.) has issued rule which is returnable after four weeks. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. With consent of parties, matter has been taken up for hearing.

2.Mr.S.R.Patel, learned advocate for the petitioner-detenu has invited my attention to the order of detention dated 17/9/2005 passed by the authority under the provisions of PASA Act. He has also invited my attention to the order of committal. Though the order of committal has been passed on 17/9/2005, the detenu was detained on 3/10/2005. The learned advocate for the petitioner-detenu has also invited my attention to the grounds supplied by the authority to the petitioner on 17/9/2005. In this case,it was only a solitary offence. In the grounds of detention, it is stated that petitioner-detenu has committed offence registered at Odhav Police Station in connection with Cr.Case No.5168 of 2005 dated 14/9/2005 under the provisions of Section 66(B), 65(A)(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner-detenu

was storing 583 bottles of country made liquor valued at Rs.1,74,900/-, one scooter valued at Rs.10,000/- and one mobile phone valued at Rs.500/-.

3.The authority has also stated that as petitioner-detenu is carrying on anti social activities as carrying on business of liquor and therefore, he is 'bootlegger' under the provisions of the PASA Act as the activities of the petitioner-detenu affects the public health in this behalf.

4.The learned advocate for the petitioner-detenu has stated that the authority could not have passed the detention order only on the ground that petitioner-detenu is a 'bootlegger' particularly on the basis of only one solitary incident which has been stated therein. For the same he has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, reported in AIR 1989 SC 491, judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in Letters Patent Appeal 223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana and judgment of the Division Bench of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of v. Police

Commissioner, reported in 2000 (1) GLR 816, particularly para 21.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order of detention. Mr.L.R.Pujari, learned APP has also relied upon the affidavit filed by K.R.Kaushik, Commissioner of Police. In the affidavit, it has been stated that the activities of the petitioner-detenu is falling within the meaning of PASA Act and therefore, the order of detention is legal and valid.

6. It may be noted that the learned advocate for the petitioner-detenu has stated that co-detenu of the petitioner-detenu has also been released by this Court on 16/12/2005 in Special Civil Application No.22638 of 2005.

7. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of

Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana (supra) and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

8. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the

grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta,J.) in the case of Ashokbhai Jivrajbhai and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

9. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner-detenu, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner-detenu may affect law and order situation and not affect the public order and

therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

10. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Jitubhai Harjibhai Rabari, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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